your Honor. We have a right to compare the edition to get the date of publication, and to make a comparison to make sure that what is—that we

—Tr. Tr. 1586—

know what is going into evidence. That becomes doubly important because the Court has already ruled in such a way that we do not have access to the exhibits in sufficient time to examine it, and I object to your Honor's remarks.

The Court: Well, you know, this will still be going on next Christmas and we will never get through.

Mr. Isserman: Well, I object to that remark.

The Court: Well, object away, object away—

Mr. Isserman: I do, your Honor.

The Court: Good heavens!

Mr. Gordon: Certainly counsel is not prevented from looking at an exhibit.

The Court: No.

Mr. Gordon: Why, Mr. Sacher asked me if he could look at Exhibit 4, and we handed it to him and he has had it there.

The Court: Now you have this other one, and I think they just continue maybe they will soon decide what they are going to do about it and then we will gradually creep along.

. . . . . .

—Tr. Tr. 1602—

. . . . . .

Mr. Gladstein: Now if your Honor please, I desire to object for the backward manner, completely

erroneous, in which this has been handled. The usual and correct method is to ask the witness what he knows to have happened at a certain time; thereafter if his testimony is accurate it may be authenticated by reference to a document; on the other hand, if the witness does not recall exactly he may say so and refer to the document and counsel may read the document or from portions of it, but to first have the document in evidence and then show it to the witness and have the witness read from it and then ask the witness if he now recalls whether the defendants were there is, I submit, completely erroneous and improper, and I object to that procedure and move to strike the evidence that has been given along that line.

The Court: The objection is overruled and the motion is denied.

Mr. McCabe: If your Honor please, I should like to move to strike out from the testimony—

The Court: Now, Mr. McCabe, you realize what we are talking about here. Here is a man who was

—Tr. Tr. 1603—

right at that convention—

Mr. McCabe: This is another matter entirely.

The Court: —who saw all these things happen. The record shows in the book there that is in evidence. The thing is as plain as the nose on your face, and you people are objecting here, on what ground it is really difficult for me to understand. Do you claim that this man wasn't there?

Mr. McCabe: I claim that Mr. Winston was not there, and I object to it as having any binding effect

upon Mr. Winston or being permitted in evidence against him inasmuch as he was not present.

The Court: Objection overruled.

Q. What happened to the office of General Secretary that had previously existed in the Party? A. It was abolished, that is to say, the Communist Political Association had a different setup of officers.

Mr. Isserman: I suggest that the record show that the exhibit was put in the presence of the witness while he was answering the question.

The Court: You mean that somebody was prompting him?

Mr. Isserman: And I would like to have it indicated at what page it is opened. Now either the witness is testifying from his recollection or he is

—Tr. Tr. 1604—

reading an exhibit. We have got to know which he is doing, and I object to his testifying with the exhibit, unless the record shows that he is reading from it.

The Court: Application denied.

Q. Now, Mr. Budenz— A. The officers—

Mr. Isserman: May the record indicate what page the exhibit is opened at?

The Court: No, it may not.

Mr. Gordon: Mr. Isserman, if you can find a page number—

Mr. Isserman: I don't care to see it, Mr. Gordon.

The Court: Now, Mr. Gordon, just let me make a suggestion.

Mr. Gordon: All right.

The Court: You know, sometimes these objections distort the proceedings a little bit, and I think it is better if we just do not pay any attention to them and do not let anything arise to cause irritation because one thing leads to another, and you know sometimes those things are sort of—well, you better just leave them alone.

* * * * * *

—Tr. Tr. 1836—

New York, March 29, 1949

Q. (Continuing) That first sentence of that sixth para-

—Tr. Tr. 1837—

graph of the Preamble reads, does it not, "The Communist Party therefore educates the working class in the course of its day to day struggles for its historic mission, the establishment of Socialism."

Now, can you tell us, Mr. Budenz, what was meant and understood by you and those associated with you, including these defendants, at the time that this Constitution was adopted at the Convention in July 1945?

Mr. Isserman: If the Court please, I object to this question on the same grounds that I have objected to the prior questions put to this witness, in which his opinion is asked of the writing in that preamble, and in which question is included his understanding about that, as previously objected to. It is the same type of question, and rather than

repeat my objections at length, I make it in this form.

—Tr. Tr. 1838—

Mr. McGohey: If the Court please, I desire to indicate that I have called the Court's attention to the fact that I have not asked the witness's opinion about something. I have asked him what was meant and understood by these words, by him and the others, including the defendants, at the time that this constitution was adopted.

Defendant Dennis: If the Court please, I must object most strenuously to this line of questions and these allegations. This witness cannot speak for any defendant or any Communist. He cannot speak any more than a Benedict Arnold can speak—

Mr. McGohey: I move to strike that, your Honor.

The Court: Well, I will let it stand.

Defendant Dennis: If the District Attorney wishes to ask questions, that is a prerogative which he has—

The Court: Mr. Dennis, let me ask a question.

Defendant Dennis: —but he cannot speak for any Communist, your Honor.

The Court: Well—

Defendant Dennis: Least of all for the defendants.

The Court: I know you do not have him as your

—Tr. Tr. 1839—

representative here in any sense, I realize that, but I am wondering, Mr. Dennis, suppose somebody who was charged with a conspiracy, speaking theoretically now,—not this kind of a conspiracy but

some other—they got up some kind of a thing that might be misunderstood by a person who did not understand it and they all understood it, the conspirators, to mean a certain thing. Now don't you think that a person who worked with them would be a competent witness to testify as to what they understood, and then if the conspirators or the alleged conspirators got up, they might testify that it meant something very different, don't you think?

Defendant Dennis: Since you asked my opinion, I will at least state it very briefly. I think it will be established before very long that some of these definitions—in fact all of them—which this witness is volunteering here, can be proved to be very identical as to what Goebbels and Himmler and others, how they interpreted the principles of Marxism and Leninism. No traitor, no traitor, no Judas could interpret principles—

The Court: What did you say—no trader?

Defendant Dennis: No traitor.

The Court: Did you say t-r-a-d-e-r or t-r-a-i-t-o-r?

—Tr. Tr. d840—

Defendant Dennis: Traitor—t-o-r.

No one would ask Benedict Arnold to interpret the Declaration of Independence.

The Court: Oh, I misunderstood. You were just attacking this witness then, that is all. I will overrule the objection.

Mr. McGohey: That is right, your Honor. I move to strike out the characterizations.

The Court: Yes, strike it out.

I misunderstood. I thought you were arguing a point of law.

* * * * *

—Tr. Tr. 1877—

New York, March 30, 1949

* * * * *

Mr. Isserman: Mr. Gordon, before you go on, I would like to have the record note that the examination of the exhibits by the jury occupied a period of about ten minutes and that the jury in that period did not read the documents but merely glanced through them.

The Court: You know, Mr. Isserman, I have noticed several times, when papers were handed up to me here, that you lawyers for the defense would then have it noted that I did or did not read,

—Tr. Tr. 1878—

and how long I took to read, and so on. I don't believe that a man sitting where you are sitting can tell what I read or what the jury or members of the jury read when they have some document in their hands, and I don't think it proper for you to make those comments and to have these things, as you claim, put down on the record because I have no assurance of their accuracy.

Mr. Isserman: If the Court please,—

The Court: I know as to me there were many times when you or one of your colleagues had something noted as to what I had not read, when I did read it, and the time that had elapsed did not seem right. I did not feel, always, that I should get into a lot of discussion about it but I don't think it proper for you to attempt to note such things because I don't think you are in a position to know.

Budenz—Direct
Colloquy

Mr. Isserman: If the Court please, we believe that the question of to what extent the jury has these documents is—may be an issue in this case, and my observation was that the jury did not read the documents; they were riffling the pages. Moreover, I would like the record to note that it is now 10.55 and that the jury had these documents before them for a short period. It will be very material in this case, or may be very material, whether the jury has read the documents or not. If there is

—Tr. Tr. 1879—

any question about the fact, the Court can certainly ascertain that fact by asking the jurors, and I ask the Court to do so so the record may be clear.

The Court: I will allow your statement to stand for whatever it may be worth.

Mr. Gordon: Of course, the ten-minute period is not quite accurate, your Honor.

The Court: No, but I think it is better, Mr. Gordon, if, instead of trying to discuss and wrangle over all these things, we just let whatever statements are desired to be made be made for whatever they may be worth.

Mr. Isserman: I would like to have a ruling, if the Court please, on my request, or the motion.

The Court: If you desire me to say exactly how many minutes or seconds it was that the jurors had the papers or the books, and how long it was that each one had it in their hands, and what portions they read or did not read, I simply will not do it.

Mr. Isserman: I am not asking the Court to be that precise. I am asking the Court to note the

general period. If my estimate of the time length is wrong, I will take Mr. Gordon's estimate of the length of time.

* * * * *

—Tr. Tr. 1908—

Mr. Gordon: Your Honor, in connection with Mr. Sacher's review of the evidence, in "The Foundations of Leninism" by Joseph Stalin, an exhibit in evidence, recommended for the Communist Party by either Eugene Dennis or John Williamson—I forget which at the moment—but it is in a paper which we have put in, at the time of the formation of the new party in 1945, in that book Mr. McGohey read to the jury the fact that Joseph Stalin, this great leader, so described by William Z. Foster, said that the United States was definitely included as one of the countries whose government had to be overthrown by this violent revolution.

—Tr. Tr. 1909—

Mr. Sacher: I object to that and move to strike that out as absolutely wrong. It does not describe correctly the contents of that statement and does not in any way affect the contents of Article—

The Court: We will get it out—

Mr. Sacher: —9, Section 2.

The Court: —and Mr. Gordon will read the very words.

Mr. Sacher: I object to that procedure, your Honor, on the ground that this is a piecemeal attempt by the prosecution to argue to the jury.

The Court: I cannot remember the exact phraseology of every exhibit and you have challenged the

accuracy of Mr. Gordon's paraphrase, if it was paraphrased language. Let us get it—

Mr. Sacher: I object to the business of these reports and these attempts to sum up to the jury in the course of an examination, in the course of consideration by the Court of an objection to a question. That is all that is involved.

The Court: You would like to do all the arguing yourself and not have the Government do any, and I am going to hear both sides in the case.

Mr. Sacher: I am willing to leave to the jury to say how much argumentation I have liked to do here.

—Tr. Tr. 1910—

The Court: I don't think that is going to be one of the things that the jury will decide in this case.

Mr. Gladstein: It seems to me that this is not the time for argumentation by anyone as to the contents of any document upon the excuse that he desires to argue for a question which he has put to this witness. Mr. Gordon purported to restate or reformulate in his own words the contents of a document in evidence. That is wholly immaterial to the question of whether Mr. Gordon's question is properly put and may be answered.

The Court: Mr. Gladstein—

Mr. Gladstein: Yes, sir?

The Court: —it is my understanding of the law that I may permit either side to read any part of an exhibit in evidence at any time I choose to do so, in the exercise of my discretion. I have heard this matter raised here. Mr. Sacher claimed that it was wrong, the statement made by Mr. Gordon was wrong, based an objection on that, and I desire

to clear that up now, and I shall clear it up.

Mr. Gladstein: Would your Honor have the reporter read to me the last question of Mr. Gordon's?

The Court: No.

Mr. Gladstein: Because there is a perfectly sound legal objection to it.

—Tr. Tr. 1911—

The Court: Well—

Mr. Gladstein: And that is, it calls on this witness to express an opinion as to unnamed persons, namely, members of the Communist Party, in a very general and vague way, and asks this witness to state what their understanding is.

The Court: Well, you see, it is so easy to have digressions and you get your mind off the point. Now, my mind at the moment is resting on the point that was raised by Mr. Sacher, namely, that Mr. Gordon had incorrectly stated something from an exhibit, and I choose to have that determined now. So, Mr. Gordon—

Mr. Gladstein: May the record record—

The Court: —will please read from the exhibit.

Mr. Gladstein: May the record show my objection on to your Honor's ruling and your overruling my objection to the question that was put to this witness?

The Court: The question has been lost in the shuffle, Mr. Gladstein.

Mr. Gladstein: I am asking your Honor to have the question read.

The Court: The question is gone.

Budenz—Direct
Colloquy

Mr. Gladstein: But this is the purpose of this trial, I thought, by question and answer to elicit

—Tr. Tr. 1912—

what the facts are.

The Court: Yes, yes. You keep it up. Go ahead, go ahead.

Mr. Gordon: Two things have been done, your Honor—

The Court: Mr. Gordon, you get busy reading that part of it so we can get along. Have you found the part?

Mr. Gordon: Yes, sir.

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—Tr. Tr. 1952—

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Mr. Gladstein: I have no objection to the contents of the book but I make this objection: I submit that it is not proper in a court of law to try men upon the fact that they recommended for study any book and, for that reason, I object to the introduction of this or any kind of book upon the ground that a man has recommended its reading or its study to any person.

Mr. Gordon: It is recommended as a guide for action.

Mr. Isserman: I have a further objection, if I may state it. I have again no objection from the standpoint of its contents but I object to the introduction of the history book in this proceeding on the ground that it is a violation of the First Amendment and, again, it seems to me as if we are putting

a book on trial, if, in fact, we are not putting history

—Tr. Tr. 1953—

on trial by the introduction of this book. Is the jury to read and study this book before it renders its verdict? Is the Court going to do it? Or shall we read it to the jury word for word and then bring in people to explain it?

It is outside the issues of this indictment.

The Court: Mr. Isserman, you get very eloquent, but it seems to me that if the contents of this book and these other pamphlets and documents of one kind or another, that were handed around, and people were told to study them and to teach other people what to do, and how they were to go around and do the things that have been testified to here, I can scarcely believe it is trying a book. It is trying those persons who used the book and other means to allegedly commit a crime, and that is part of the paraphernalia of the charge, it seems to me. I will allow it.

Mr. Isserman: I would like to object to your Honor's characterization.

The Court: I don't see how it is trying a book.

Mr. Isserman: I would like to object to your Honor's characterization of the activities of the defendants, in so far as they have been disclosed by the evidence.

The Court: I say, that is the claim. I do not say it is so. I took it from your openings that you all

deny vigorously that there was any such conspiracy

—Tr. Tr. 1954—

as charged here, but this is the prosecution's case.

Mr. Sacher: It seems to me, your Honor, that a trial which admits into evidence the history of the Communist Party of the Soviet Union is not very different from that trial which took place 170 years ago against Tom Paine for writing "The Rights of Man," for which he was tried in England under George III, and it seems to me—

The Court: Would you like to make a little argument on that?

Mr. Sacher: Yes.

The Court: Well, you are not going to do it.

Mr. Sacher: That is what I am doing.

The Court: That is the end of the argument. You will have your time to sum up at the end of the case. Then you can talk about Tom Paine and the other trials that are not relevant, but not now.

(Government's Exhibit 30 received in evidence.)

Mr. Gordon: (To jury) Government's Exhibit 30, The History of the Communist Party of the Soviet Union, contains on page 167 under a heading "Theory and Tactics of the Bolshevik Party on the question of War, Peace and Revolution," the following—

Mr. Isserman: I might say this, your Honor: we did not object to the contents, as I indicated

—Tr. Tr. 1955—

before, but now I do object to the reading of any portion of this book to the jury by the Government.

The Court: I thought you were objecting pretty comprehensively but now you say you weren't.

Mr. Isserman: I object to reading any portion or section of this book without reading all of it.

The Court: Well, how many pages are in that book, Mr. Gordon? About 400 pages?

Mr. Gordon: That is pretty close, your Honor. There are 363.

Mr. Isserman: And my ground is that you have got to read all those pages and more in order to make any sense of it. That is precisely what we are getting to and the defense is anxious to avoid it. We are getting into a big field of political ideas and philosophical ideas.

Mr. Gordon: There is nothing philosophical about this and I object to this characterization of it.

Mr. Sacher: I object to the statement by Mr. Gordon that there is nothing philosophical in that book because I think that nothing would be more tragic than for Mr. Gordon to become the censor of what the American people may or may not read. That is what this trial is about and that is what it is quite apparent it is about.

—Tr. Tr. 1956—

The Court: Quite apparent to whom?

Mr. Sacher: To everyone in this court.

The Court: Well, it is not apparent to me.

Mr. Gladstein: Can we agree that Mr. Gordon has not quite qualified himself as a philosopher?

The Court: It would simply be wonderful for the defense if we could get everybody laughing and giggling here and forget the seriousness of the charge that these men stand indicted for. After all this is no place to have continuous levity and joke cracking although a little of it goes a great ways. Let's stop objecting to one another and keeping that up ad infinitum.

We will now take a little recess for lunch until 2.30, and then we will decide about the book.

(Recess to 2.30 p.m.)

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—Tr. Tr. 2014—

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Mr. Gladstein: I wish to make the same objection to this document that I have made with respect to all books and written pamphlets that have been received here upon all of the same grounds, except to urge this new one, your Honor, that it now appears that not only is a book being placed on trial but two editions.

Mr. McGohey: I move to strike that, your Honor. There isn't a scintilla of evidence, in anything that

—Tr. Tr. 2015—

has been testified to up to now, that anybody but these defendants are on trial.

The Court: Yes.

Mr. McGohey: And I object to that characterization and ask your Honor to strike it out.

Mr. Sacher: May I amend it then to say that the defendants are on trial because they circulated books.

The Court: Because they have circulated books and did other things and made statements as part of the conspiracy to overthrow the Government of the United States by force and violence.

Mr. Sacher: There is no such charge.

Mr. McGohey: You mean to advocate—

Mr. Sacher: In this case there is no such charge.

The Court: That is what the case is about.

Mr. Sacher: No. I ask your Honor to charge the jury that that is not what this case is about, and that there is no such charge in the indictment.

The Court: I suppose I will have to go back to get the exact wording of it, although you probably remember it.

Mr. Isserman: If the Court please, before the Court does, I move for the withdrawal of one juror and a mistrial on the ground that the Court's im-

—Tr. Tr. 2016—

proper characterization of the charge in the indictment would seriously prejudice all of the defendants.

The Court: Yes, I will deny the motion. As you remember, ladies and gentlemen of the jury, the charge is that the defendants wilfully and knowingly did conspire with each other and with divers other persons to the grand jurors unknown to organize as the Communist Party of the United States of

America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and knowingly and wilfully to advocate and teach the duty of necessity of overthrowing and destroying the Government of the United States by force and violence.

That, as I have explained several times before, is the charge, and I meant nothing different in my slight abbreviation of a few moments ago.

Now, I charge you that no books are on trial here. These individual defendants, that you see here, who once in a while seem to enjoy the proceedings so much, are the ones on trial, not any books, and so we will now go ahead.

Mr. Gladstein: I have a motion to make.

Mr. Isserman: Your Honor, I have an objection—have you one? I yield to Mr. Gladstein.

—Tr. Tr. 2017—

Mr. Gladstein: I move that the remarks you have just made concerning the enjoyment—

The Court: I see them smiling, sneering and snickering there. The jury undoubtedly sees it as well.

Mr. Gladstein: Just a minute. If your Honor please, I assign those remarks as prejudicial misconduct on the part of the Court. I assign as misconduct your refusal to permit me to make an objection.

The Court: When did I refuse?

Mr. Gladstein: By your interruption at the present time and by pyramiding the misconduct which

I am assigning. I ask the Court to instruct the jury—

The Court: You are now told that you may go ahead and make your remarks in extenso.

Mr. Gladstein: Now if the Court please, I assign the Court's remarks concerning the enjoyment by these defendants of a trial in which they are here charged with, as the evidence so far shows, circulating books is not accurate, your statement is not accurate and the basis—no basis exists upon which it could be accurate, and I submit that that kind of remark, particularly when your Honor said to me at the close today, your Honor charged me with levity, your Honor charged me with levity, and I submit—

The Court: It was an innocent sort of levity, I suppose.

—Tr. Tr. 2018—

Mr. Gladstein: Well, I am assigning the Court's remarks as more than levity and not innocent in its effect on the jury, and I ask the Court to charge the jury to disregard the remarks that the Court has made.

The Court: Well, I will not make any such instruction.

Mr. Gladstein: Then I ask the Court—

The Court: Their conduct has been open to the view of all the jury as well as myself.

Mr. Gladstein: I submit that those remarks that the Court has just made are prejudicial and I ask for a mistrial.

The Court: Well, the motion is denied.

Mr. Isserman: Now if the Court please, I move again for the withdrawal of one juror and for a mistrial on the grounds which I previously urged that the Court had misstated the charge, and on the further ground that the peremptory reading of the indictment which the Court indulged in subsequently did not cure the prejudicial error, and on the further ground that the Court's remark with reference to the enjoyment by the defendants of this proceeding was wholly uncalled for by any fact in evidence, by any conduct of the defendants, and if it were—

The Court: Well, they were right behind you, you couldn't see them.

—Tr. Tr. 2019—

Mr. Isserman: And if it were—

The Court: You couldn't see them.

Mr. Isserman: —it was not the function of the Court to make a comment of that kind, and it prejudices the defendants and interferes with the conduct of the defense.

The Court: Well, I thought I had put a stop to it.

Mr. Sacher: If it please the Court—

Mr. Isserman: I would like a ruling on my motion.

The Court: The motion is denied.

Mr. Sacher: I wish to object to the Court's conduct and I move for a mistrial on the ground that your Honor has compounded—compounded the offense which your Honor committed in the characterization of the nature of the charges, for after

you read the indictment to the jury you said that your previous characterization was a slight abbreviation of what you had read; in other words, what your Honor said to the jury was that this indictment charges the defendants with conspiracy to overthrow the Government of the United States, and I say that this indictment does not contain any such charge, and to the extent that your Honor has encouraged the jury to believe that, your Honor is making it impossible for these defendants to have

—Tr. Tr. 2020—

a fair trial within the meaning of the Fifth and Sixth Amendments—

The Court: You had better get down to something substantial.

Mr. Sacher: And I respectfully move that your Honor declare a mistrial by ordering the withdrawal of a juror.

The Court: Motion denied.

Defendant Dennis: I wish to state very briefly to the Court, to the jury, that neither I nor my co-defendants—

The Court: Well, I saw you. You are one of the chief offenders.

Mr. Dennis: Neither I nor my co-defendants enjoy this proceeding. I would remind the Court that we eleven are faced with 120 years' imprisonment and on a collateral charge with another 120 years, but more important, we realize, too, that if the allegations as set forth in the indictment, and if the Budenz fables were to prevail, that our party would be outlawed, and with it the First Amendment to

the Bill of Rights, and therefore, your Honor, I say we do not take this trial lightly and while we do not enjoy the proceedings, I can assure you that each of us to the best of our capacity and jointly will nonetheless defend our honor, our convictions,

—Tr. Tr. 2021—

our rights.

The Court: All right, Mr. McGohey, go ahead.

Mr. McCabe: Your Honor, I should like to make a separate motion for the withdrawal of a juror and the declaration of a mistrial on the ground that your Honor's attitude towards all counsel for the defendants has so lowered their effectiveness in the eyes of the jury or has tended to reduce their effectiveness as effectively to deprive all the defendants of the services of their counsel and to discount in the eyes of the jury objections, statements and any other activity which counsel make.

The Court: Motion denied.

Go ahead, Mr. McGohey.

* * * * *

—Tr. Tr. 2041—

New York, March 31, 1949

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Mr. Isserman: If the Court please, at this time I move to strike the testimony hereinafter referred to and the documents hereinafter referred to on the grounds which I will indicate.

First, the testimony of the witness on page 1344, relating to an alleged conversation that the witness had in the fall of 1935, concerning his joining the

Communist Party, it is a conversation with Mr. Stachel and runs from page 1344 to page 1350. My reason for moving to strike this testimony is as follows:

That it does not refer to any of the issues in the indictment; it relates to a time long prior to the period covered by the indictment; cannot be deemed as evidence of intent since the period covered antecedes the date of the statute; it is not admissible as background or preliminary matter, not being pleaded in the indictment: it is confusing and prejudicial to the defendants; constitutes unfair surprise to the defendants; and the net effect of the testimony is to divert the jury from an understanding of the issues in the case and thus to obscure and suppress

—Tr. Tr. 2042—

the truth rather than to reveal it.

Much of this testimony violates both the rule with respect to the confusion of issues as well as the rule with respect to undue prejudice. It is also hearsay and it is not binding on the defendants.

The second portion which I desire to strike is the testimony on page 1350, beginning at page 1350 of the transcript—

The Court: Don't you think I had better pass on these as you make them? If you have, say, 60 or 70 of these to make, I will never remember them by the time you get to the last. I remember this first one, and I think, possibly, it will be a little easier for me to follow as to each section at the close of it, don't you think?

Mr. Isserman: I think that might be an idea.

The Court: I deny that first part.

Colloquy

Mr. Isserman: Would your Honor want to hear me on it?

The Court: I thought I just did hear you.

Mr. Isserman: I stated the grounds. I would like to argue the grounds, if your Honor will permit.

The Court: Well, the grounds as stated seemed to me to be very—go ahead. Maybe you have something there.

—Tr. Tr. 2043—

Mr. Isserman: In this connection I would like to call your Honor's attention to the recent decision by the Supreme Court in the case of Krulewitch v. The United States, which was decided last month, No. 143, October Term, 1948, in which, in a separate concurring opinion Justices Jackson, Murphy and Frankfurter pointed out the dangers in the admissibility of evidence in conspiracy cases—in the admission of evidence in conspiracy cases. For example, Justice Jackson said, and I am referring to Law Week Citations, which is—

The Court: I am familiar with that. I think I know just—

Mr. Isserman: It is reported in 17 Law Week and I am referring to page 4276, in which it was said that "The prosecution"—"Normally, the prosecution should first establish prima facie the conspiracy and identify the conspirators, after which evidence of acts and declarations of each in the course of its execution are admissible against all. But the order of proof of so sprawling a charge is difficulty for a judge to control. As a practical matter, the accused often is confronted with a hodge-podge of acts

and statements by others which he may never have authorized or intended or even known about, but which help to persuade the jury of the existence of

—Tr. Tr. 2044—

the conspiracy itself. In other words, a conspiracy often is proved by evidence that is admissible only u) on assumption that conspiracy existed. The naive assumption that prejudicial effects can be overcome by instructions to the jury"—citing a number of cases; citing a particular case—"all practicing lawyers know to be unmitigated fiction."

This testimony as well as the other testimony to which I shall refer, including the excerpts which have been read from documents, constitutes the very type of hodge-podge which the Supreme Court talks about in the Krulewitch case; and even at this very stage of the material which has been admitted before the jury on the ground of background and on the ground of preliminary matter, and in the manner in which was admitted, has already led to much confusion of the issues, has already misled the jury, to the point where it is impossible for them to form any judgment whatsoever.

Now, with respect to the matter, we have indicated that it antedates the statute, we have indicated also that in that period the Communist Party had been dissolved, had become the Communist Political Association, and had been reconstituted in 1945, the period alleged in the indictment that is charged by

—Tr. Tr. 2045—

the Government, and that is one thing which the Government seeks to establish. And under these cir-

cumstances, this testimony going back to 1935, when he had a conversation with one of the defendants, is admissible for all the reasons stated.

The Court: Do you desire to say anything about that, Mr. McGohey?

Mr. McGohey: Well, only this, your Honor, that with respect to the citation and the argument based upon the Krulewitch decision, I don't have the decision here before me, but I have read it, and I have some familiarity with that Krulewitch case because it is a case which came up from this district—

The Court: Yes; tried several times here.

Mr. McGohey: Yes. As a matter of fact, your Honor, Mr. Wallace, who is sitting alongside of me here, tried it the first and second times it was tried. The application or the effort at applying the decision and particularly Mr. Justice Jackson's opinion, to this case here, I think, misses the mark because it is clear from the record in the Krulewitch case that the evidence that Mr. Justice Jackson was talking about is an entirely different kind of evidence with an entirely different thrust, than the evidence which the witness Budenz gave with respect to these

—Tr. Tr. 2046—

conversations.

Here the testimony is with respect to conversations by a defendant presently on trial, as to what he said and what he did with this witness at the time this witness was becoming a member of the Party, and under the jurisdiction and under the direction of the defendant Stachel.

Colloquy

Now, there is, of course, an abundance of law to support the proposition that you can go beyond and go back of the period in an indictment in order to show intent.

The Court: Yes.

Mr. McGohey: And your Honor was careful to restrict the introduction—the reception of that evidence and, indeed, it was only offered as against the defendant Stachel and not the others.

The Court: All right.

Mr. McGohey: Clearly, your Honor; I think that the ruling of the Krulewitch case does not apply here.

The Court: Motion denied.

Mr. Isserman: If your Honor please, there is this consideration in the Krulewitch case—

The Court: How many of these have you got, Mr. Isserman?

—Tr. Tr. 2047—

Mr. Isserman: I have a number. I will not argue them all. I will not repeat any argument.

The Court: I don't think I need any further enlightenment on this. It seems to me a rather elementary thing, so that I deny that motion.

What is the next one?

Mr. Isserman: On page 1350 of the testimony to page 1369 there is a conversation relating to—there is testimony relating to a second conversation between Stachel and the witness. To this testimony we make the same objection.

Mr. McGohey: I beg your pardon, Mr. Isserman. What is that page you are referring to?

Colloquy

Mr. Isserman: Page 1350 running through to page 1369.

Mr. McGohey: Thank you.

Mr. Isserman: Second conversation.

This is a conversation which took place in 1935 and includes the alleged criticism of an article which Mr. Budenz had written in connection with his joining the Communist Party.

—Tr. Tr. 2048—

And we object to this evidence on all the grounds which I had urged on my objection to the first item of evidence.

The Court: Motion denied.

Mr. Isserman: My next motion to strike goes to Government's Exhibit No. 1 which is referred to on page 1356 and refers to the announcement of Mr. Budenz joining the Communist Party—1365, I am sorry— I misread the citation.

To this exhibit I raise all the objections that I have raised in the first item and add that it brings in a host of new issues which are irrelevant to this proceeding and is confusing to the jury, far outweighing any probative force it has. My contention is that it has none whatever.

The Court: Let me see that Exhibit 1.

Mr. McGohey: While that is being sought, your Honor, I ask Mr. Isserman's and the Court's permission to make an observation here. I am looking at the record here as we go along, and I find out that with the exception to the reference to the Krulewitch case—I do not know that Mr. Isserman has called that to the Court's attention before but the trend of

legal argument which is being made now was made and in more detail by him, and the objections, at the time this evidence was received and at the time

—Tr. Tr. 2049—

these exhibits were received, so what we apparently are doing now is going over again the objections in the form of arguing a motion.

Mr. Isserman: If the Court please, I have added additional grounds which I want to urge in respect to each of these items, and at this time state my—make this motion to strike because the Court having overruled objections the motion to strike is in effect a motion to reconsider the objections made as well as advancing new grounds which we are calling to the Court's attention.

The Court: Well, if what you are doing is just asking me to reconsider my rulings on evidence, I don't know—I thought these things that you had were not raised before or you wanted to make your record clear, and although you didn't say so specifically I got no idea that you were just repeating the objection.

Mr. Isserman: I am not just repeating the objection, your Honor. That is what Mr. McGohey said. I said I have added new grounds.

The Court: Well, you said that two or three times and it turned out that he was right.

Mr. Isserman: Well, I will ask Mr. McGohey if he will go to my first objection and show me where—

The Court: Well, I am not going to take the time to go over each one of these things a half dozen

—Tr. Tr. 2050—

times to see if there is some word left out.

Colloquy

Now let me look at this Exhibit 1 and see what it is that is that is so bad about it.

Mr. Isserman: Certainly nothing good about it so far as the evidence goes—

The Court: What is that?

Mr. Isserman: Certainly nothing good about it: it has no probative value.

The Court: All right, then I will deny the motion; it cannot hurt anybody if it has no value.

Mr. Isserman: No, I said it was prejudicial. I said there was nothing good about it. Your Honor said, "Let us see what there is bad about it." I said it was prejudicial.

The Court: Well, let me look at this, the host of collateral issues that you said it raised. I was trying to find them. What is that host of collateral issues?

Mr. Isserman: If I can see the exhibit I will call it to your Honor's attention.

The Court: Well, don't you remember without looking at it? You are making the motion.

Mr. Isserman: I would like to look at the exhibit when I refer to the items, your Honor.

The Court: Yes, I see.

—Tr. Tr. 2051—

Mr. Isserman: First of all, there is a question of whether Mr. Budenz was executive secretary of the American Workers Party.

Secondly,—

Mr. McGohey: May the record show that Mr. Isserman is reading from a copy of the exhibit while he is making his argument?

Mr. Isserman: That is right. I am reading from a copy of Exhibit No. 1.

Colloquy

Secondly, there is the statement that the Communist International constitutes the sole challenge to the capitalist world.

Thirdly, there is a statement—thirdly, there are statements relating to the Seventh Congress of the Communist International, which statements will have to be explained and met.

Fourthly, there is a whole discussion of Trotskyism which is contained in the article.

Fifthly, there is a characterization of the Communist movement in America which appears in the last paragraph.

Sixthly, there is a question of the merger of the American Workers Party with the Trotskyites and the reasons therefor, and the characterization of that merger by Mr. Bundenz.

—Tr. Tr. 2052—

These are all issues which have been injected into this proceeding by this exhibit and which the defendants will have to meet if the exhibit remains in evidence.

The Court: Well, we will meet that when we come to it. I will deny the motion.

Mr. Isserman: Next is the testimony on page 1371 relating to the directions which Mr. Bundenz received from Mr. Stachel in connection with going to Chicago to take charge of the Midwest Record. To that we urge all the grounds that I urged with respect to item No. 1.

The Court: Motion denied.

Mr. Isserman: Next is the testimony appearing at pages 1448 and 1449 relative to the discontinuance—

Colloquy

Mr. McGohey: Pardon me; may I interrupt just a moment, please?

Now, your Honor, I should like to direct your Honor's attention—I do not know whether you have the minutes here or not—

The Court: Yes, I have.

Mr. McGohey: Well, turn to page 1371.

The Court: 1361.

Mr. McGohey: 1371.

The Court: 1371; all right, I have got it.

Mr. McGohey: You see there Mr. Isserman says,

—Tr. Tr. 2053—

"I object to that question on the grounds previously urged, your Honor," and if you go back you will find that Mr. Isserman, at the time he was objecting to the introduction of this testimony, made the same argument that he is now making before you.

Mr. Isserman: I wish to state that I did not make the argument. I did not urge all the grounds which I am urging now.

Mr. McGohey: Well, I suggest, then, your Honor, that the mover ought to indicate to the Court and to the counsel for the Government what are the new grounds so that we may direct our attention to those. I take it that the Court having ruled on the grounds previously urged, that we ought not go over the argument on those grounds again.

Mr. Isserman: We are not making any argument. I am merely restating the ground. The Court has already precluded argument.

Mr. McGohey: Precluded argument?

Colloquy

The Court: Precluded argument. I know, Mr. Isserman, you and your colleagues have said many, many times how I have precluded argument. I don't know how a Judge could listen to more argument than I have been listening to here, and yet the more

—Tr. Tr. 2054—

I listen the more you insist that I refuse to listen, but go ahead, you make the argument.

Mr. Isserman: All right.

The Court: You make it, I will listen to it in extenso.

Mr. Isserman: I am making it.

The Court: Go ahead.

Mr. Isserman: I am not making it in extenso.

The Court: Well, make it the way you want to make it.

Mr. Isserman: I am making it the way I want to make it.

The Court: That is just fine. Now go ahead and do it.

Mr. Isserman: Now there is a motion pending before your Honor.

The Court: Have you some new motion addressed to this new colloquy that we have had?

Mr. Isserman: No. I am back to my original motion.

The Court: Do you want to have the reporter read it so you can get your trend of thought back?

Mr. Isserman: No. I know my trend of thought. If your Honor would like me to repeat it I will.

The Court: I don't think I would like to have that

—Tr. Tr. 2055

done.

Mr. Isserman: Then let the reporter read it.

(Record read.)

Mr. Isserman: Now if the Court please, my next reference is to the testimony of page 1398, running over to 1400—I am sorry.

The motion which I was making when I was interrupted related to the testimony at page 1448 and page 1449 relative to the discontinuance of the publication of the Daily Record in Chicago and which refers to the Hitler-Stalin pact. The Court will remember that this testimony was first given at page 1387, it was stricken, and was subsequently readmitted. We urge that it be stricken on the grounds we urged in the first motion I made this morning and add to them that this is a conclusion of facts not in evidence.

The Court: Motion denied.

Mr. Isserman: My next reference is to the testimony at page 1398 and running over to 1400, and relates to events prior to the indictment in regard to which the witness testified he was advised by Browder he was made president of the Freedom of the Press Corporation, and I urge the objections that I have urged in respect to the first motion to strike.

The Court: Was that the part where he said they

—Tr. Tr. 2056—

made him president of that because they might have to make out the Daily Worker wasn't connected with the Party any more?

Mr. Isserman: Yes, that there was some protective reasons, some reference to protective reasons which—

The Court: Motion denied.

Mr. Isserman: My next reference is to page 1405 which relates to the receipt by the witness of four books from the defendant Stachel. We say that this testimony in addition to the grounds, which I have urged on the first motion to strike this morning and the books in question are protected by the First Amendment and that evidence relating to the receipt of said books should for that additional reason be stricken.

The Court: Motion denied.

Mr. Isserman: My next motion relates to the testimony on page 1409 to page 1416 which refers to and includes the reading of Government's Exhibit 2, and I include in this motion the motion to strike Government's Exhibit 2 which was a resolution by Stalin passed by the Seventh World Congress in 1945, and this is in addition to the grounds I have urged on my first motion: that this brings in a great number of issues not related to this proceeding and relates

—Tr. Tr. 2057—

to political activity which is protected by the First Amendment under the clause guaranteeing freedom of assembly.

If I said 1945 I meant 1935.

The Court: That is the one where the resolution wound up "and the Communists will always and everywhere be faithful to the end to the great and

invincible banner of Marx, Engel, Lenin and Stalin." You say that is not relevant?

Mr. Isserman: I say it is not relevant. It goes back to 1935. It can't be deemed as evidence of intent. It is not evidence or relevant as background, is prejudicial and constitutes surprise to the defendants, it is not binding.

The Court: It seems to me that the burden of all these motions is that you claim that if a crime is established by statute and that crime is one only when wilfully done and hence involving intent, that acts and statements prior to the passage of the statute are necessarily not admissible as bearing on the intent?

Mr. Isserman: That is one of our contentions.

The Court: Well, that is the only thing I see and it seems to me almost absurd on its face. You could have this statute passed as it was in 1940, and if they caught somebody right away, somebody who in the

—Tr. Tr. 2058—

judgment of those charged with the enforcement of the law was violating the law which took effect in 1940—

Mr. McGohey: June 28, 1940.

The Court: —June 28, 1940, then if you are right then all the things the man had done even a week or two before, which manifested his unlawful illegal intent—

Mr. Isserman: First of all, it wasn't unlawful in the week or two before and here we are talking about ten years before.

The Court: I know, but even though it might be at the moment unlawful it might really show an intention to teach and advocate or to form an assembly of persons who would teach and advocate the overthrow of the Government of the United States by force. Now intent is something that does not spring up at the moment of passing some resolution. There may be a background to it. I just can't agree with your argument, that is all. But that is the only point of law that I see in all these motions, but you may proceed if you desire to.

Mr. Isserman: Your Honor doesn't desire me to argue the other points of law? I think upon argument your Honor would be persuaded.

The Court: If you desire to put on the record that I have refused to hear you I will again put on the

—Tr. Tr. 2059—

record that I have not refused to hear you and then we will go on doing that as we have so often.

Mr. Isserman: Your Honor is putting on the record that which I have not previously referred to. If your Honor desires to hear argument, which your Honor says he doesn't see any substance to, I will be very glad to do so.

The Court: Then I think you would be wise in doing so, because if there will be statements made like the ones you made I would rather have you make the argument. I don't see any merit to it but go ahead. I am not telling you not to do it. Go ahead and please do not put on a statement that I have refused to listen.

Mr. Isserman: I have not made such a statement at this point and I will put such statement on the record only when in my opinion I think your Honor is precluding me.

The Court: And when I am not I will put a statement on the record that I am not.

Mr. Isserman: Now the next motion refers to testimony between pages 1419 and 1424 relating to the Seventh World Congress of the Communist International and I urge in respect to this motion all of the grounds urged including the ground that these references bring issues into this case which have no relevance to any issue of the indictment and open up the door to collateral issues to which, first, the de-

—Tr. Tr. 2060—

fendants plead surprise, and which will require considerable time and evidence to refute, including, as our preliminary investigation indicates, the taking of depositions in other countries for which we will make application shortly.

The Court: We will pass on those when we get them. The motion is denied.

Mr. Isserman: The next motion to strike refers to the Budenz testimony on 1450 to 1455 of the record which relates to the program of the Communist International which was adopted in 1928 and which is in evidence as Government's Exhibit 3. I move to strike this document and this testimony for all of the reasons given in connection with my first motion to strike and on the further grounds that its possession and circulation and distribution is protected by the First Amendment, and on the further ground

that the excerpts read therefrom were confusing and misleading to the jury and did not disclose the true and full nature of the document.

The Court: Motion denied.

You know, Mr. Isserman, I suggested, I think, on the first day of the taking of testimony that some working arrangement be made between counsel for both sides about the defense reading such portions of these exhibits as they thought explained or qualified what was read by the prosecution. Has any

—Tr. Tr. 2061—

progress been made on those conversations?

Mr. Isserman: There wasn't.

The Court: Did you make any endeavor to comply with my request?

Mr. Isserman: We have made endeavor to comply with your request to the point that the defendants and their counsel have considered the Court's request. We find one of our observations on the material introduced thus far is that the selection of the Government of its passages is so eclectic and so brief in relation to the entire document that for us to add three or four more paragraphs or another chapter would be simply to add to the confusion and not to clarify; and in many cases the entire document must be read and further explanatory material in reference to that document be introduced before it could possibly be comprehensible to any person not familiar with Marxism-Leninism, and further—

The Court: If your views have any substance we will be here a good many years in this trial.

Colloquy

Mr. Isserman: Well, your Honor, the Government is bringing in these documents, not the defendants. They are bringing in volume after volume and book after book with regard to a philosophy that took a hundred years to develop, and that is what is really on trial.

—Tr. Tr. 2062—

The Court: Suppose, Mr. Isserman, speaking hypothetically, there is a charge that A, B, and C conspired to teach and advocate the overthrow of the Government of the United States by force and violence, and we will say for the purposes of argument that they all got together and they got up certain papers that said that in the most unequivocal language in so many words, they had everything down there about how they were going to get the fellows that were going to do it, what arms and ammunition they were going to have, how they were going to get to the President's house and blow up the house, and then in an additional 750 pages of a document they had a recital of a whole lot of things which had nothing to do with the overthrow of the Government by force and violence but spoke in the most extravagant terms of how good all these people were and that they did this and they did that and the other thing. Do you think the other 750 pages would have to be all read?

Mr. Isserman: That is not the case I am talking about. That is not this case. And I can point out what the essential difference is.

The Court: It would seem to me if there were certain parts of this book that were relevant to the

charge that anything that bore on that same sub-

—Tr. Tr. 2063—

ject that was in the book might well be read to qualify or modify it, but mere things that had absolutely no reference to it—

Mr. Isserman: Well, if it has absolutely no reference to it, that is another matter. But the essential difference between this case—and I think it is important that we understand it—and the hypothetical case that your Honor has given is, that in this case, unlike any other case under which there was a charge of unlawful advocacy, the words of "unlawful advocacy" are not set forth in the indictment, were never furnished in any bill of particulars, and what is charged is that the alleged unlawful conduct, what the prosecution charges was the alleged unlawful conduct, arises out of the adoption of certain principles, that is, the principles of Marxism-Leninism.

The Court: What we were talking about is your statement that you had to read the whole book.

Mr. Isserman: I am getting to that, your Honor.

If the issue before the Court is, what is Marxism-Leninism? Then the Court is faced with that problem of determining what it is and of determining what evidence is relevant on that question, and the jury is faced with the problem of determining what those principles are and what the whole series of

—Tr. Tr. 2064—

principles are out of which Marxism-Leninism is derived.

And further, out of the very nature of that—

Colloquy

The Court: If you did all that you might forget about the charge of teaching and advocating the overthrow of the Government by force and violence.

Mr. Isserman: You would not, because Mr. McGohey has said that Marxism is not merely a dogma but a guide to action and you must therefore understand how the language has been derived, how it is applied, and the Government just can't pick a line here and a paragraph there and expect to present either to the jury or to the Court or to anyone what the principles of Marxism-Leninism are.

The Court: If you feel you have to do this thing, when it gets around to the defense it will be—

Mr. Isserman: That is one of the reasons we have urged most strenuously that this is not an issue triable in a court of law.

The Court: You may have a misconception of the issue.

Mr. McGohey: I think the question of whether this is an issue triable in a court of law was determined by the Congress of the United States when they passed this statute. Now if it be, as the defendants have claimed in their pretrial motions, that this is a statute that the Congress constitutionally

—Tr. Tr. 2065—

cannot pass, that is a law question which has been determined in this case, and I presume the question is reserved for an appeal if the case ever gets up on appeal where the higher court will determine it.

We are getting to the point where we are arguing matters of law which were argued for three days last October before Judge Hulbert and passed upon

by him. And while I am at it I desire to object to the statement that Mr. Isserman made that Mr. McGohey said something about Marxism being a guide to action. Mr. McGohey did not say that. That was said many, many years ago by Mr. Marx himself, and apparently it has been repeated in a great many of the exhibits, and if I said it that was true only in the sense that my voice expressed the words.

Mr. Isserman: I didn't mean that Mr. McGohey was creating a new principle of Marxism-Leninism.

The Court: It is wonderful the way you can get a response from your adherents.

Mr. McGohey: I am grateful for the compliment.

The Court: The roar in the back of the room ought to be noted in the record. There is evidently quite a crowd.

Mr. Isserman: I don't know that it is more

—Tr. Tr. 2066—

crowded than any other day.

The Court: Quite a crowd of adherents, we will say.

Mr. Isserman: The point I was making had nothing to do with the statute. The statute didn't say you could indict a group of persons for advocating a body of principles. That is something that finds its way into the indictment, and the charge in the indictment is that the defendants were teaching Marxism-Leninism. That is not found in the statute.

The Court: I think you can keep arguing for practically an indefinite period. What is the use of our going into this point now? I was asking you

a question about reading all these books. You took the position that if there was a book read from that you couldn't have a paragraph or two or ten or twelve pages in explanation, you had to read the whole book. I have to see that to believe it.

Mr. Isserman: Certainly you couldn't try any ideas of, say, Christianity by quoting a few passages out of the Bible.

The Court: I really think that is a comment that you ought not to make. How you can compare what we have been hearing here with the doctrines of Christianity is beyond me.

—Tr. Tr. 2067—

Mr. Sacher: The Romans did it.

The Court: I think if we leave religion out of this it will be the better thing to do. It has been my judgment in many, many years of practice that the man who starts talking about religion usually is sorry he did.

Mr. Isserman: Your Honor, I wasn't talking about religion.

Mr. Gordon: Excuse me.

The Court: Yes, Mr. Gordon?

Mr. Gordon: To borrow an expression, may I say that it is 20 minutes to twelve and I would appreciate a recess.

The Court: Yes, let's have a recess for ten minutes.

(To Mr. Isserman) Do you think we ought to excuse the jury for the day?

Mr. Isserman: I don't see any reason for that.

The Court: You think you will be through in ten minutes?

Colloquy

Mr. Isserman: It will take longer than that.

The Court: Maybe I better excuse them for lunch. Well, I don't think I better do that. I will take a short recess and see how things go.

(Short recess.)

—Tr. Tr. 2068—

Mr. Isserman; If the Court please, I now move to strike out the testimony of Mr. Budenz found on pages 1500 to 1503-a in which the witness discusses submitting his article to the defendant Stachel, as he described it, as a matter of Communist discipline. We urge—I urge all the grounds of striking this testimony that I urged in respect to the first motion I made this morning.

The Court: Motion denied.

Mr. Isserman: The next testimony which I move to strike is the testimony of Mr. Budenz running from 1504 to 1528 and refers to Government's Exhibit 4. In connection with this motion I move to strike out Government's Exhibit 4 as well, and all excerpts which have been read from that exhibit, which is known as Peters' Manual—urging all the grounds that I urged in connection with my first motion to strike, and further that the possession of this document and its circulation was protected by the First Amendment to the United States Constitution and that it has not been established to be an official document of the Communist Party which was organized and constituted in 1945.

The Court: Motion denied.

Colloquy

Mr. Isserman: I move to strike out the next Government's Exhibit No. 5, and all testimony in relation thereto, on the same grounds that I have

—Tr. Tr. 2069—

just moved to strike Government's Exhibit No. 4.

The Court: Motion denied.

Mr. Gordon: What was that last page? I am sorry.

Mr. Crockett: 1525 to 1543.

The Court: "Why Communism," by M. J. Olgin.

Mr. Isserman: That is right. The testimony in relation thereto appears at pages 1525 to 1543, including the reading of excerpts, and in respect, your Honor, to these two matters—

The Court: Which two matters?

Mr. Isserman: That is, Government's Exhibits 4 and 5, I would like to add to my motion there that the reading of the excerpts was confusing and misleading and—

The Court: Well, didn't you say that you made the motion on all the grounds previously urged about the other one? It seems to me I have heard you say that several times.

Mr. Isserman: All the grounds previously urged in my first motion, which doesn't include that.

The Court: All right, motion denied.

Mr. Isserman: I wonder if I have finished. What I meant to say is that the excerpts as read were confusing and misleading and did not afford—did not give the jury the true meaning of the document.

—Tr. Tr. 2070—

I now move to strike Government's Exhibit 6 and all evidence relating thereto, pages 1546 to 1553, as

well as the material read therefrom. That is the exhibit known as Foundations of Leninism. And I also move to strike—

The Court: By Stalin?

Mr. Isserman: By Stalin.

And I also move to strike the reading from that exhibit at subsequent occasions, including this morning.

The Court: Motion denied.

Mr. Isserman: My next motion to strike relates to testimony appearing on pages 1554 to 1556, referring to Government's Exhibit No. 7, as well as the quotation therefrom, which appears from pages 1558 to 1561. This describes events in January 1944 when the Communist Party dissolved and became the Communist Political Association. I urge the grounds that I urged in respect to my first motion to strike, and the further additional ground that the document, Government's Exhibit 7, describes political activity which is protected under the First Amendment under the right to assembly, right to petition, and the right to free speech.

The Court: Motion denied.

Mr. Isserman: I make the same motion with respect to Government's Exhibit 8, which relates generally to the same subject matter.

—Tr. Tr. 2071—

The Court: Motion denied.

Mr. McGohey: Were there any pages for that?

Mr. Isserman: Government's Exhibit 8. I do not seem to have the page numbers for that available at the moment.

Colloquy

The Court: You mean the pages of the record?

Mr. Isserman: That is right.

Mr. McGohey: I was just inquiring whether you had stated them.

Mr. Isserman: No, I had not stated them.

Mr. McGohey: Thank you.

Mr. Isserman: And as well to Government's Exhibit 8-A, making the same motion on the same grounds.

The Court: I do not seem to have any 8-A, unless that is part of the pamphlet that was marked in evidence.

Mr. Isserman: It is 8 and 8-A. 8-A is part of 8, so my motion—

The Court: Isn't 8 merely for identification?

Mr. Isserman: I think Government's Exhibit 8 was a newspaper, and 8-A was the portion that was offered. Therefore, my motion is directed to 8-A, rather than to 8.

The Court: All right. Motion denied.

—Tr. Tr. 2072—

Mr. Crockett: That is referred to on page 1566.

Mr. Isserman: Government's Exhibit 8 is referred to on page 1566.

Mr. Shapiro: It is not a newspaper. It is a booklet.

The Court: It turns out not to be a newspaper.

Mr. Isserman: It is a publication.

The Court: My first supposition was right, because I thought my notes indicated a booklet, which is a copy of the Communist for February 1944, was merely marked for identification. The pages, pages 107 and 108, were marked Exhibit 8-A in evidence,

and, with respect to that you make your motion and I deny it.

Mr. Isserman: That is correct.

I now move to strike the testimony of Mr. Budenz commencing on page 1570 and going on to page 1582, referring to a meeting of a group of national leaders, concerning which the witness conversed with Davis, and at which the witness was not present. It was a meeting which was held to consider Foster's letter. We object to that on all the grounds that I urged in the grounds to my first motion to strike.

The Court: Did the witness say that somebody had told him about it?

—Tr. Tr. 2073—

Mr. Isserman: Yes, he said Mr. Davis told him about it.

The Court: Then I allow it to stand.

Mr. Isserman: I next move to strike—

Mr. McGohey: Your Honor said you would allow it.

The Court: Allow it to stand.

Mr. McGohey: That denies the motion.

The Court: Yes, I deny the motion.

Mr. Isserman: Yes, I understood your Honor's remark to mean that.

I next move to strike Government's Exhibit 9, reference to which appears on page 1587. and all the testimony relating thereto, and excerpts read therefrom, this being the proceedings of two Conventions unrelated to the matter alleged in the indictment.

Colloquy

In addition to urging the grounds I urged in respect to my first motion to strike I urge the fact that possession and circulation of the document are protected by the First Amendment to the United States Constitution, and that it describes political activities also protected by that Amendment.

The Court: Motion denied.

Mr. Isserman: I also move to strike testimony beginning on page 1597, referring to certain sections of Exhibit No. 9 and names mentioned therein.

—Tr. Tr. 2074—

The Court: Motion denied.

Mr. Isserman: I now move to strike the witness's testimony appearing on pages 1608 to 1612 referring to a meeting of the United Nations in San Francisco and communication to the staff of the Daily Worker by Joseph Starobin on the grounds previously urged with special emphasis on the fact that this matter was prejudicial to the defense.

The Court: Motion denied.

Is that the way you pronounce that name? Somebody called it Starobin.

Mr. Isserman: I think it is Starobin.

Mr. Gordon: Mr. Reporter, that is with the accent on the first syllable, the second pronunciation given by Mr. Isserman.

Mr. Isserman: My next motion, if your Honor will permit, includes Exhibits 12 and 12-A. I think that is—

The Court: What made you think I wasn't going to permit you?

Mr. Isserman: I was going to try to include several of the exhibits together.

Colloquy

The Court: Oh, that is excellent.

Mr. Isserman: Exhibits 12 and 12-A, or, actually 12-A, which is part of 12 for identification; 13-A,

—Tr. Tr. 2075—

which is part of Exhibit 13 for identification; and Government's Exhibit 14. And the motion to strike these exhibits is based on the following grounds, that they bear on no issue in the indictment; they contain no proof of either conspiracy or of the advocacy charged; that possession, circulation and sale are protected by the First Amendment, by the guarantee of free speech in that amendment, and by the right of assembly and petition, including the right to engage in political activity guaranteed by that Amendment; that no foundation has been laid showing the circumstances under which these documents and contents were used and applied by defendants; that their introduction constitutes surprise, in that no bill of particulars was furnished, and that the reading of excerpts, as was done, was confusing and prejudicial.

The Court: Motion denied.

Mr. Isserman: I make the same objection to Government's Exhibit No. 15, which is a portion of the Daily Worker of June 16, 1945, using the same grounds but adding the fact that the matter contained therein was hearsay. It is a discussion—purports to be a discussion by the defendant Thompson.

The Court: Well, he is one of the alleged conspirators. June 16, 1945? I don't follow this at all,

—Tr. Tr. 2076—

but, anyway, motion denied.

Colloquy

Mr. Isserman: It is hearsay, and it could only be admissible on a relaxation of the hearsay evidence rule, one, if it would show conspiracy and, secondly, if, having showed conspiracy, it related to unlawful advocacy. It does neither, so it remains within the hearsay rule.

The Court: I have received all that proof, as you know, subject to my later instructions to the jury, and this is one of the alleged conspirators in the very period of the conspiracy.

Mr. Isserman: Yes, but it is matter which is unrelated.

The Court: But you move to strike anyway, I understand. Motion denied.

Mr. Isserman: I move to strike because it is unrelated to any conspiracy and unrelated to any unlawful advocacy.

The Court: I know, you deny the conspiracy.

Mr. Isserman: I not only deny it but this evidence does not bear on it and there has been no proof of it.

The Court: Well, I suppose there is no use discussing it with you because you have a different idea

—Tr. Tr. 2077—

of hearsay than I do; and there is a difference if what is said by one of the alleged conspirators in furtherance of the conspiracy is not admissible.

Mr. Isserman: Precisely.

The Court: If that is so, why, I don't know the law, that is all.

Mr. Isserman: My point is that it isn't in furtherance of the conspiracy, and that is why the hearsay rule applies.

The Court: That is where the difference of opinion comes in.

Mr. Isserman: There has been no establishment of conspiracy here at all.

The Court: Well, I said I would instruct the jury later about that, and I shall.

Mr. Isserman: In that connection I would like to ask your Honor to read the Jackson opinion because it did not deal solely with the evidence in the Krulewitch case but with—

The Court: I have read it. Maybe you wish to deny I have read it.

Mr. Isserman: Oh, no.

The Court: If you do, all right.

Mr. Isserman: I don't wish to deny it.

—Tr. Tr. 2078—

The Court: I say I have read it.

Mr. Isserman: Then I can only ask your Honor to consider it further in respect to this application.

The Court: Well, I really have been considering it about enough, I think.

Mr. Isserman: I now move to strike Government's Exhibit 16 which is a notice regarding a National Committee meeting of June 18, purportedly by John Williamson, on the ground that this notice is clearly protected by the First Amendment, that it relates to the calling of a meeting which is protected by the First Amendment to the United States Constitution, and it has no relevancy on any issue in this case.

The Court: Motion denied.

Colloquy

Mr. Isserman: I move to strike out Government's Exhibits No. 17, No. 19 and No. 20—

Mr. Gordon: Just a minute, excuse me. I would like to point out to the Court that, looking at the record at pages 1696 to 1698, when Government's Exhibit 19 was offered in evidence, it was passed to counsel, they examined it, and they offered no objection.

The Court: What about that, Mr. Isserman?

Mr. Isserman: Well, I will concede that whether or not we offered objection, this is an opportunity to call to the Court's attention the inadmissibility of this evidence, and therefore we ask to strike it.

—Tr. Tr. 2079—

The Court: Well, you know—

Mr. Isserman: It is precisely—you see, your Honor, we are in a double position when Mr. McGohey says we are repeating, and then Mr. Gordon says we are not repeating.

The Court: I know, that seems very interesting, but when an exhibit is offered and no objection is made and it is received, the Court generally gets the impression that there is no objection made to it.

Mr. Isserman: Well, after consideration, your Honor, we think it should be stricken.

The Court: You now decide—

Mr. Isserman: And we press our motion to strike.

The Court: —to object to it and you move to strike.

Mr. Isserman: Yes, on the ground that it is protected by the First Amendment to the United States Constitution.

The Court: Well, whatever effect your failure to object in the first place has, I won't pass on it now but I merely deny your motion.

Mr. Isserman: Was that now addressed to Government's Exhibit 16 alone? I think it was to that that Mr. Gordon rose. I meant to include in this motion, and therefore will move now to strike Ex-

—Tr. Tr. 2080—

hibits Nos. 17, 19 and 20 on the ground that they are not relevant to any issue covered in the indictment, and that they are expressions and manifestations of rights guaranteed under the First Amendment by way of free speech and free assembly and political action.

The Court: I think you mean 19-A and 20-A, because 19 and 20 were merely marked for identification.

Mr. Isserman: That is correct, your Honor.

The Court: Treating your motion as addressed to those exhibits, I deny it.

Mr. Isserman: I make the same motion with respect to Exhibits Nos. 21 and 22 dealing with convention issues and articles by Dennis, Williamson and Foster, parts of which were read into the record and to all references to these exhibits on the ground that they relate to no issue in the indictment and refer to activities protected by the First Amendment to the United States Constitution. They constitute neither admissions nor evidence of any conspiracy and do not fall within the exceptions of the hearsay rule.

The Court: How far down did you get—to 25?

Colloquy

Mr. Isserman: To 22. I could include 23, 24 and 25 in the same motion.

—Tr. Tr. 2081—

The Court: Now you mean, 21-A, 22-A, 23-A, 24-A and 25-A?

Mr. Isserman: Yes, I am referring to them.

The Court: The motion is made with reference to those exhibits and the motion is denied.

Mr. Isserman: My next motion to strike deals with the testimony of Mr. Budenz on page 1799 running through to 1809, in which Mr. Budenz was asked to give, and did purport to give, an explanation of the meaning of the first sentence of the constitution of the Communist Party. In this—in connection with this ground I wish to urge that no foundation has been laid for this testimony, that Mr. Budenz was called upon to decide the ultimate issue or testify on the ultimate issue in this case, and did so testify, and in that respect he invaded the province of the jury.

The Court: Well, what are these pages?

Mr. Isserman: 1799 to 1809.

The Court: 1799—just let me read there.

Mr. Isserman: I am referring to the first sentence of the preamble.

The Court: I know, to the constitution—I remember it very well, but I just want to see what was said about it here.

(After examining.) I will let it stand.

—Tr. Tr. 2082—

Mr. Isserman: I now move to strike out, your Honor, Mr. Budenz' testimony beginning on page

1809 of the transcript and running to page 1811 in which he characterized a portion of the preamble of the constitution of the Communist Party as Aesopian, and in that connection I move to strike the Government's Exhibit 27-A, which is the preface to a booklet called "Lenin's Imperialism", which is Government's Exhibit No. 27 for identification, and all testimony in reference thereto, and quotations read therefrom, on the ground that no foundation had been laid for the testimony of Mr. Budenz; on the second ground that it was hearsay as to the defendants and not binding upon them; on the third ground that the quotation was torn from context and misleading and confusing to the jury, and that the booklet itself, possession and circulation of the booklet was within—was protected by the guarantees of the First Amendment.

The Court: Motion denied.

Mr. Gladstein: Your Honor, could I ask you to reconsider the ruling made on that, and with the Court's permission interrupt Mr. Isserman—

The Court: No.

Mr. Gladstein: As to this point?

The Court: No. I have just read over about 10 or 15 pages or more of discussion in the minutes on

—Tr. Tr. 2083—

the same thing, and there was a good deal of discussion there and I have given it consideration and I am going to let it stand.

Mr. Gladstein: On this question of the interpretation by the witness of a provision in the constitution? I have something to suggest to your Honor

that I don't think you have perhaps considered—

The Court: Well—

Mr. Gladstein: '—and I regard it as fundamental, and I think your Honor ought to have a second look at this.

The Court: You know, Mr. Gladstein, if there was a little less persistence in stating that everything was fundamental, I would like to listen more, but you say every one of these things is so fundamental.

Mr. Gladstein: Some are more fundamental than others.

The Court: But I listened to them and most of them seem to me to be perfectly elementary propositions, that there is nothing in them, but, however, maybe this is going to be a case of something more fundamental than something else, so you tell me what is the point.

Mr. Gladstein: Well, you will recall that what happened there was that the witness was asked to identify the constitution of the Communist Party—

The Court: Now don't go and repeat it all. I

—Tr. Tr. 2084—

know what it is. There was certain language there that, when I read it, it looked a little peculiar to me, and I was wondering maybe there is more here than meets the eye, and then when he goes to explain he says they all understood that that was Aesopian business, it was a regular thing for the Communists to do. Now your clients will perhaps get up, when their time comes, and say "That is all wrong," but here is a man who says that they

deliberately got up this kind of double talk, and it seemed to me that the language was of such a character very often as to make it seem possibly at least that that was so, but, anyway, if that is what they did, it seems to me that it is admissible.

Mr. Gladstein: It seems to me your Honor is forgetting what the indictment charges. The indictment charges a conspiracy to advocate certain things. The document received in evidence upon motion of the Government, namely, the Constitution, says just the opposite of that. Then your Honor permits this witness to give his statement for the purpose of having the prosecution try to show that the defendants advocated not what they did advocate, which is plain for everybody to see, but just the opposite. Now my point is this—

The Court: Well, maybe they did that.

Mr. Gladstein: —the charge, the advocacy is

—Tr. Tr. 2085—

what is set forth in that document. That is what they advocate.

The Court: You see, Mr. Gladstein, if that were so, all a man who was in the course of committing a crime would have to do would be to put in a little statement, if it was a document, if it was part of the paraphernalia—put in a statement that this of course was not intended for such and such a purpose, and in that way he could escape a conviction.

Mr. Gladstein: Well, to whom was this being advocated, your Honor?

The Court: Well—

Colloquy

Mr. McGohey: I object to this line of argument, your Honor.

Mr. Gladstein: Isn't that a question? To whom was it being advocated?

Mr. McGohey: Your Honor, I object to that question. I don't think it is proper argument. Now we have started out here this morning—and, by the way, your Honor, I think the record ought to how show that since we have reconvened after recess the jury is no longer here.

The Court: Yes, it should so appear.

Mr. McGohey: While this argument has gone on.

The Court: Yes.

—Tr. Tr. 2086—

Mr. McGohey: But we have a situation here, your Honor, where every bit of the testimony of the first witness has been made the subject of a motion to strike, and every exhibit introduced by this witness has been the subject of a motion to strike.

The Court: No, they left out—

Mr. McGohey: Well, very nearly all.

The Court: They did not move to strike out 26, which was the constitution of the Communist Party of the United States of America.

Mr. McGohey: I see.

The Court: And they may have missed one or two others. I think that is the only one that they did not move to.

Mr. Isserman: But I have not finished.

Mr. McGohey: Now we are getting up—

The Court: Well, let me hear Mr. McGohey.

Colloquy

Mr. McGohey: We are getting back to the kind of argument that took up a great deal of time in the earlier days, in the earlier proceedings in this case where in the guise of argument counsel undertook to cross-examine the Court, to find out what the Court means about something and what the Court thinks about who is being advocated or what was advocated, and to whom was the advocacy made.

—Tr. Tr. 2087—

The Court: I don't mind that so much.

Mr. McGohey: Well, I am sure your Honor doesn't mind it but we have been here now since the 17th of January trying to get on with the case.

The Court: Yes.

Mr. McGohey: And my point goes to the fact that we are taking up a great deal of time upon matters which your Honor has given great consideration to. There was a long discussion and colloquy, as your Honor points out, at the time that this question was raised.

The Court: They keep saying that it is always something new, and then I listen and I must say it does not seem new, it seems like something I heard before; but you go ahead, Mr. Gladstein, and let me hear what you have to add. I am afraid that on this matter of this Aesopian language, seeing this whole literature permeated with jargon that is not intelligible to a person who isn't on the inside, it seems to me that it is perfectly admissible but maybe you can show me some reason why it isn't.

Mr. Gladstein: Well, you see this happens to be rather basic in the case at this point, and I hope that your Honor gives it some thought. Your Honor will recall that the charge in this case consists of

—Tr. Tr. 2088—

two things: one, an agreement which the indictment calls a conspiracy; and, two, to advocate something.

The Court: Yes, and don't forget the intent.

Mr. Gladstein: Well, the intent has to be shown, that is absolutely correct. Now the Government must therefore prove the agreement or the conspiracy, that is, the people get together and agreeing that they are going to advocate a particular thing.

The Court: Well, all the cases are against that.

Mr. Gladstein: Now wait.

The Court: They do not have to get together and agree.

Mr. Gladstein: Well, they have to—

The Court: You would never convict a conspirator in the world if you had to prove that they had all gotten together and agreed.

Mr. Gladstein: Well, I used that—

The Court: There is a multitude of cases—

Mr. Gladstein: I mean they must conspire together in the legal sense. Your Honor understood that, I trust.

The Court: No, I heard what you said, and it seems to me that it is just plain ordinarily bad law.

—Tr. Tr. 2089—

Mr. Gladstein: Well, let me state it in the way that I am satisfied, and I think your Honor will

agree, that the cases set it forth. The Government must prove that the defendants conspired, that is to say, they came in accord with each other and agreed to do something and take the next step. Now that next step is to advocate something, and the advocacy—the advocacy is here contained in the constitution of the Communist Party. Now what you have allowed Mr. Budenz to do is to then say "Oh no, that doesn't mean what it says. That means something t. opposite," but the defendants are entitled to have what they advocate in that constitution, taken exactly as it stands, because this witness—

The Court: There is no use, Mr. Gladstein; I am not going to grant your motion.

Mr. Gladstein: But don't you see—

The Court: I hear what you say, but, as I said before, if that were so, people could commit crimes with impugnity by always sticking in a clause to the effect that they were innocent.

Mr. Gladstein: Yes, and if the law were as your Honor is permitting it to be applied in this case, then consider what the opposite would be, namely, that you and I could get together and agree to sign

—Tr. Tr. 2090—

a document, to do something, to say something or to open a business, and somebody else would come in and say "Let me see that document."

"Oh, no, that doesn't mean open a business. That means rob a bank."

The Court: Who is that somebody else?

Mr. Gladstein: It doesn't matter who that somebody else is.

The Court: That is where we make the difference.

Mr. Gladstein: The document is the best evidence of what we advocate, and that constitution sets it forth.

The Court: Well, that is just bad law, Mr. Gladstein.

Mr. Gladstein: I submit it is not.

The Court: Well, you have instances of it in the fraud cases. You have instances of it in a multitude of other cases. If documents were always to be taken simply for what appears on their face, then wrongdoing, fraud, chicanery, criminal action of one kind or another, could always be consummated with impugnity because you could always have a document that looks all right.

Mr. Gladstein: But if you—

The Court: Let us not argue any more.

Mr. Gladstein: But if you and I agree—

The Court: Well, we don't agree.

—Tr. Tr. 2091—

Let me hear the rest of Mr. Isserman's motion.

Mr. Gladstein: Well, the net result of this is that what you are trying, when the Government puts in the constitution of the Communist Party and then gets this kind of interpretive, personal testimony—much of it hearsay, too, and conjectural and conclusionary as to what other people understand—you remember that, because you permitted Mr. Budenz to say how it was understood by others.

The Court: You remember I told you I did not want to hear any more argument.

Mr. Gladstein: Yes.

Colloquy

The Court: Well, I do not like people to say that I didn't say such a thing, but this time I do say it. Now I really don't want to hear any more discussion on this point, Mr. Gladstein.

Mr. Gladstein: Very well.

The Court: And I think we had better get back to Mr. Isserman.

Mr. Isserman: I do not know if the Court has ruled on my last motion to strike.

The Court: Well, I think it was the very one that Mr. Gladstein was supplementing your discussion on.

Mr. Isserman: I believe so.

The Court: And I deny that motion.

—Tr. Tr. 2092—

Mr. Isserman: Now if the Court please, I move to strike Mr. Bundez's testimony on pages 1822 to 1824 of the record, testimony relating to the constitution of the Comunist Party.

The Court: You move to strike Exhibit 26, which is the Constitution of the Communist Party?

Mr. Isserman: It is relating to Exhibit 26, and again being an interpretation by Mr. Budenz of the language of the Communist Constitution, on quoting democracy and the enemies of it.

The Court: So you do move to strike Exhibit 26?

Mr. Isserman: No, I am talking about the testimony relating to that exhibit.

The Court: Am I right, that you made no motion to strike Exhibit 26?

Mr. Isserman: That is correct.

The Court: That is what I thought. All right.

Colloquy

Mr. Isserman: But I am now talking about Mr. Budenz's testimony.

The Court: Yes, I know.

Mr. Isserman: On that, in interpreting the pledge to uphold democracy and to fight those who destroy it, on the ground that it is opinion evidence, it is highly prejudicial, no foundation laid for it, no qualifications were established, and that it invades the province of the jury.

—Tr. Tr. 2093—

The Court: Motion denied.

Mr. Isserman: I now move to strike Government's Exhibit 27 and the testimony relating to it appearing on page 1824 and the quotations read from it, between 1824 and 1836, being an article on Patriotism in Political Affairs. Now that might have been designated 27-A.

The Court: Yes.

Mr. Isserman: On the ground—

The Court: That is that—

Mr. Isserman: Article on Patriotism.

The Court: —that article of Lenin's called Imperialism, The Highest State of Capitalism, 27-A.

Mr. Isserman: No.

The Court: You haven't even got straight which ones you are moving to strike out.

Mr. Isserman: May I have just a minute, your Honor? (Examining.)

The Court: Well, you are going to move to strike them all. Why don't you just put two or three of them together?

Mr. Isserman: Well, I can't, your Honor, because they are on different grounds.

The Court: They sound kind of similar to me.

—Tr. Tr. 2094—

Mr. Isserman: All right, I withdraw my motion and now make a motion to strike Government's Exhibit 28.

The Court: 28-A.

Mr. Isserman: 28-A, which is an article on Patriotism appearing in Political Affairs issue of October 1945, to all references to that exhibit and to readings therefrom between pages 1824 and 1836, on the ground that the same is hearsay. The witness was not shown to have knowledge of the article, and it was not written by the defendants or by any defendant or by anyone responsible to the defendants. It was not relevant to any issue in this case and the circulation of that article is protected by the First Amendment to the United States Constitution.

—Tr. Tr. 2095—

The Court: Isn't that that Baltisky article?

Mr. Isserman: That is correct.

The Court: By the way, did those things come over from Moscow printed in English?

Mr. Isserman: I am not prepared to tell you.

Mr. Gordon: That is the testimony, your Honor.

Mr. Isserman: I don't know, but I did point out to your Honor that bringing that article in, which we deem irrelevant, opens the door again to the need for applying to this Court to take depositions in a foreign country, and in that respect—

The Court: I deny the motion.

Colloquy

Mr. Isserman: —in that respect I wish to add that the introduction of that article was a matter of unfair surprise to us, not having been mentioned in the indictment and no bill of particulars having been furnished.

The Court: Motion denied.

Mr. Isserman: I move to strike the testimony of Mr. Budenz from pages 1836 to 1841, in which he was called upon to explain a sentence in a paragraph in the preamble to the constitution, on the same grounds that I urged with respect to similar testimony of Mr. Budenz, interpreting the phrases of the constitution.

The Court: Motion denied.

—Tr. Tr. 2096—

Mr. Isserman: I move to strike the testimony of Mr. Budenz—

Mr. Gordon: Excuse me a moment. I wondered if that last motion included the comments by the defendant Dennis, when he called the witness names? Was that included in the motion to strike?

The Court: Does that have to do with it?

Mr. Isserman: I am talking about the testimony of Mr. Budenz. I think Mr. Gordon understood me. All right.

Mr. McCabe: Introducing a note of humor.

The Court: You may proceed then. Is that the place where Mr. Dennis made those remarks?

Mr. Gordon: Yes, your Honor, and most of it is pertaining to that. I am trying to follow the—

The Court: On those pages?

Mr. Gordon: Yes, sir. I am trying to follow Mr.—

Colloquy

The Court: You mean where he called Mr. Budenz a traitor and a—what were those other words he used?

Mr. McGohey: I think he mentioned Judas, Benedict Arnold and some other characters.

Mr. Gordon: That is what most of it is about.

The Court: I will strike that out.

Mr. Isserman: I am not moving to strike that out.

—Tr. Tr. 2097—

I am moving to strike out the testimony of Mr. Budenz that I have indicated.

The Court: Motion denied.

Mr. Isserman: If there is a desire to repeat what Mr. Dennis has said, it has been done.

Mr. Crockett: I think the record indicates that the Court has already ruled to strike out Mr. Dennis's comments.

The Court: Well, what of it?

Mr. Isserman: I now move to strike the testimony of Mr. Budenz between pages 1844 and 1845, relating to the structure of the Communist Party and other matters unrelated thereto in a period prior to the indictment on the grounds that there is no relevancy, no foundation was laid, and on the further ground that, in so far as this testimony related to the structure of the Communist Party, it related to the structure of a political party, and that all these matters are protected by the First Amendment and have no bearing on the issues of this case.

The Court: Motion denied.

You must be pretty near getting down to the bottom of the barrel.

Colloquy

Mr. Isserman: I am, I am gradually getting to the bottom. It has been a long barrel. Mr. Budenz was

—Tr. Tr. 2098—

on the stand—

The Court: All right, go along.

Mr. Isserman: —for a long period of time.

I move to strike Mr. Budenz's testimony on pages 1855 to 1866, dealing with the structure of the Party and certain alleged plans to go underground, alleged to have been promoted or suggested by Mr. Dennis in the winter of 1939 and 1940, and urge all the grounds that I urged with respect to my first motion to strike which I made this morning.

The Court: Motion denied.

Mr. McGohey: Pardon me. May I get the pages of that? Is that 1855 to 1866?

Mr. Isserman: 1855 to 1866, right.

Mr. McGohey: Thank you.

Mr. Isserman: I move to strike, on the same grounds, the testimony of Mr. Budenz found between pages 1871 and 1884 of the transcript pertaining to publishing of educational matters and to certain meetings in the period 1939 to 1940, on all the grounds mentioned in my first motion to strike made this morning.

The Court: Motion denied.

Mr. Isserman: I move to strike the testimony of Mr. Budenz between pages 1888, 1889 and 1890, on the ground that this testimony deals with publica-

—Tr. Tr. 2099—

tions in general and with educational matters, all of which have no relevancy to any issue in this case, and which are protected by the guarantees of the First Amendment.

The Court: Motion denied.

Mr. Gordon: Excuse me. In connection with Mr. McGohey's pointing out that the motions were identical with those made before, I direct your Honor's attention to the one just made. Mr. Isserman referred to pages 1888 to 1890, and at the bottom of page 1889, this is what he said, which is almost identical with the language he just used—

The Court: It is that little difference that he relies on. He says it is entirely different. It may be just one word or two words, but I cannot stop to check up each time to see whether there is a word or two different.

Mr. Isserman: If the one or two words embrace another legal point, and if it should be repetitious, then I ask your Honor to reconsider your ruling. I am trying to call your Honor's attention—

The Court: Mr. Isserman, if you think I am curtailing you, that I am preventing you, you are wrong. I am not.

Mr. Isserman: I haven't said anything about that, your Honor. Your Honor keeps repeating it for no

—Tr. Tr. 2100—

purpose that I understand.

The Court: Go ahead. Very well. You do seem to like to argue. I never saw anything like it.

Mr. Isserman: I would like to proceed, if I can.

The Court: Proceed with the rest of the motion.

Mr. Isserman: May I proceed now?

The Court: Yes, you may.

Mr. Isserman: I move to strike the testimony between pages 1897 and 1904, referring to an alleged

review commission, on the ground that it is immaterial, has no relevancy to any issue in this case, is designed to create prejudice, and is a matter of unfair surprise to the defendants, not having been alleged in the indictment or furnished by the bill of particulars which was requested.

The Court: Denied.

Mr. Isserman: I move to strike the statements by Mr. Gordon on page 1908 of the transcript, which purport to be a summary of Foundations of Leninism as being highly misleading, prejudicial and improper.

The Court: Well, let us see what page those highly prejudicial and improper remarks are on.

Mr. Isserman: They are improper in that—

The Court: What page? What page?

Mr. Isserman: 1908, your Honor.

—Tr. Tr. 2101—

The Court: Just let me look at it and then I can probably tell without too much argument. Nineteen hundred and what?

Mr. Isserman: And 8.

I might add to this—

The Court: Let me read it, if it is possible. It is just—

Mr. Isserman: I would like to add another ground before your Honor rules.

The Court: Well, if that is highly prejudicial, I am an Eskimo.

Mr. Isserman: What did your Honor say? May I get that remark?

The Court: I deny the motion.

Colloquy

Mr. Isserman: Your Honor, your Honor was suggesting that I was trying to interrupt your Honor, and I wanted to suggest another ground, and when I do wait, then your Honor rules without allowing me to state my ground. May I state an additional ground?

The Court: You move to strike my comment about the Eskimo?

Mr. Isserman: No, I didn't hear what it was. I didn't know whether it was about an Eskimo or an Iroquois.

The Court: It wasn't important.

Mr. Isserman: My additional ground, which I

—Tr. Tr. 2102—

intended to state before your Honor ruled, was that, in effect, Mr. Gordon testified as an expert, he wasn't under oath, and no foundation was laid to qualify him as an expert, and also that the document itself is the best evidence.

Mr. Gordon: May I point out to your Honor that I was merely making a legal argument in answer to Mr. Sacher's argument, and that thereafter this document, which Mr. Isserman says is the best evidence, I read from.

The Court: I know; how that can be so important, I just don't understand. Anyway, the motion is denied.

Mr. Isserman: I now move to strike the testimony of Mr. Budenz on pages 1914 and 1915 of the record with respect to his definition of renegade. No foundation was laid for Mr. Budenz' competency to define this term. And in this connection I also move to

strike on the ground that the best evidence of differences between Kautsky and Lenin, which Mr. Budenz testified about, are contained in the writings of these gentlemen and not from Mr. Budenz, who is no expert on the subject.

The Court: Motion denied.

Mr. Isserman: Also, it is a matter of surprise, of unfair surprise, to the defendants, not having been

—Tr. Tr. 2103—

mentioned in the indictment.

Page 1919 of the testimony, I move to strike Mr. Budenz' alleged explanations of the meaning of the constitution on the same grounds that I have urged in connection with his other interpretation of language of the constitution and the preamble.

The Court: Motion denied.

Mr. Isserman: And I am referring to the Constitution of the Communist Party, which is in evidence.

I move to strike Government's Exhibit No. 25, which is the constitution and by-laws of the—

The Court: Do you suppose you could sort of lump some of them together now? Because I want to get the jury back here and have us proceed before we go out to lunch. I should think—

Mr. Isserman: I have a few more pages, your Honor.

The Court: I should think after an hour or so of this that you could, perhaps, sort of put a little general conclusion to cover all the rest.

Mr. Isserman: There are documents and testimony. I am trying to bring them together.

Colloquy

The Court: You see, you covered all the documents, so that there is none of them left.

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Mr. Isserman: I am now referring to a document which is Government's Exhibit 29 which I haven't covered, your Honor.

The Court: Did you miss that?

Mr. Isserman: I haven't missed it; I am referring to it now.

The Court: I will give you just until a quarter of one to continue this and I am going to bring the jury back. I find when you get going you have no terminal facilities.

Mr. Isserman: I don't know what your Honor means by my not having any terminal facilities. Except for the interruptions by Mr. McGohey and the interrogation by the Court I have been going as fast as I can.

The Court: You are going to be permitted to continue until a quarter of one.

Mr. Isserman: I will continue as fast as I can with the rest of the matter.

The Court: Probably have a hard time stringing it along.

Mr. Isserman: Your Honor seems to be preventing me from continuing. May I proceed?

I move to strike Government's Exhibit 29 on the ground that it relates to a period prior to the time covered by the indictment, that it is not related to

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any issue in the indictment, that it is protected, that its possession and circulation is protected by the

First Amendment, that it relates to political activities which are guaranteed by the First Amendment, and that it contains references to an organization with which the Communist Party was not affiliated for a number of years prior to the time in the indictment, and which itself had been dissolved prior to any period in the indictment, namely, the Communist International, and that references thereto under these circumstances are prejudicial to the defendants.

The Court: Motion denied.

Mr. Isserman: I move to strike the testimony of Mr. Budenz on page 1938 to page 1940 of the transcript relating to some alleged going underground by Williamson on the ground it is hearsay, that it antedated the indictment, it was a conclusion not based on facts disclosed in evidence, and had no relevance to any issue in the indictment and was prejudicial to the defendants.

The Court: Motion denied.

Mr. Isserman: I move to strike the testimony on pages 1941 and 1943 and 1946 of the record relating, respectively, to—relating to the testimony of the witness as to when he met Stachel, Davis, Winston and Stachel, as to when he met Irving Potash, on the ground that this testimony is remote and im-

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material and has no bearing on any issue in the case and it was prejudicial to the defendants.

The Court: Motion denied.

Mr. Isserman: I move to strike Government's Exhibit 30, "History of the Communist Party of the Soviet Union," on all the grounds urged in connec-